

Plaintiff, complaining of defendant, alleges and says:

- 1. Plaintiff, the North Carolina State Bar (hereinafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
- 2. Defendant, Nikita V. Mackey (hereinafter "defendant" or "Mackey"), was admitted to the North Carolina State Bar on August 26, 2003, and is an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, plaintiff alleges:

FIRST CLAIM FOR RELEF

- 3. Defendant was employed by the Charlotte-Mecklenburg Police Department (formerly the Charlotte Police Department) as a police officer from about October 1989 until about June 2003.
- 4. On or about December 27, 2002, defendant signed and submitted an application (hereinafter "the application") to the Board of Law Examiners of the State of North Carolina (hereinafter "BOLE") to be permitted to take the North Carolina Bar Exam.
- 5. Question number 13 of defendant's application to the BOLE asked defendant: "Have you failed to file any personal local, state, or federal income tax

return, or failed to pay any taxes due? If YES, give full details below and furnish documentation showing that taxes are current."

- 6. Defendant answered "no" to question number 13 of the application and wrote "none" as to details and documentation.
- 7. In his BOLE application defendant failed to disclose and failed later to supplement that he failed to pay Federal income taxes for the years 1997, 1999, 2001, and 2002 at the times such taxes were due.
- 8. In his BOLE application defendant failed to disclose and failed later to supplement that he failed to pay State income taxes for the years 1999, 2001, and 2002 at the times such taxes were due.
- 9. Question number 18(a) of defendant's application to the BOLE asked defendant: "Have you ever had a complaint filed against you personally, or as a member of a professional association, or corporation, or any legal entity in any civil, criminal or administrative forum alleging fraud, deceit, misrepresentation, forgery or professional malpractice. If YES, list details below."
- 10. Defendant answered "no" to question number 18(a) of the application and wrote "none" as to details.
- 11. In or about December 1991, defendant was suspended without pay for lying to the Chain of Command Review Board at the Charlotte Police Department during an official administrative investigation regarding his improper conduct at an off duty security job.
- 12. In his BOLE application, defendant failed to disclose that he had been suspended without pay for lying to the Chain of Command Review Board of the Charlotte Police Department during an official administrative investigation regarding his improper conduct at an off duty security job in December 1991.
- 13. On or about October 21, 2002, defendant was the subject of an official administrative investigation of the Charlotte-Mecklenburg Police Department.
- 14. On or about October 21, 2002, defendant was verbally and in writing advised of his "Employee Disciplinary Interview Advice of Rights" as part of an official administrative investigation into the "abuse of comp. time" and fabrication of "daily duty status reports," resulting in credit to him and another police officer for hours they had not worked.
- 15. In his BOLE application, defendant failed to disclose and failed later to supplement that he was the subject of an official administrative investigation by the Charlotte-Mecklenburg Police Department alleging fraud, deceit and/or misrepresentation.

- 16. Question number 25 of defendant's application to the BOLE gives defendant an opportunity to make a full disclosure as to any other incident or occurrence in his life which is not otherwise referred to in the application which he would like to acknowledge in the interest of full disclosure. The application states as follows: "FULL DISCLOSURE: Is there any other incident or occurrence in your life which is not otherwise referred to in this application which you would like to acknowledge in the interest of full disclosure? It is crucial that you honestly and fully answer all questions, regardless of whether you believe the information is relevant. If YES, give full details below."
- 17. Defendant answered "no" to question number 25 of the application and wrote "none" under details.
- 18. In his December 2002 BOLE application, defendant failed to disclose and failed later to supplement that he was suspended without pay for lying to the Chain of Command Review Board at the Charlotte Police Department regarding his improper conduct at an off duty security job in December 1991. Defendant failed to disclose and later supplement that he was being investigated by the Internal Affairs Section of the Charlotte-Mecklenburg Police Department regarding allegations that he had fabricated "daily duty status reports" in order to obtain credit for himself and another police officer for hours he and the other police officer had not worked.
- 19. On or about February 24, 2003, defendant was suspended without pay and cited to the Civil Service Board with recommendation that his employment with the Charlotte-Mecklenburg Police Department be terminated.
- 20. Defendant failed to provide a supplement to his BOLE application disclosing that he had been suspended without pay and that a recommendation had been made that his employment with the Charlotte Police Department be terminated.
- 21. Question number 49 of defendant's application to the BOLE asks defendant to handwrite that he understands that the application is a continuing application as follows: "THE FOLLOWING PARAGRAPH IS TO BE COPIED BY THE APPLICANT IN THE APPLICANTS USUAL HANDWRITING IN THE SPACE PROVIDED. I understand that this application is a continuing application and must give correctly and fully the information herein sought as of the date of my taking the North Carolina Bar Examination. I will, therefore, notify the Board as to any change in respect to any matter regarding which information is herein sought, and as to any incident which may have any bearing upon any information herein sought."
- 22. On or about June 2, 2003, defendant resigned his position with the Charlotte-Mecklenburg Police Department.

- 23. On or about June 11, 2003, defendant supplemented his application to the BOLE and informed the BOLE that he had resigned his employment as of June 2, 2003 in order to devote full time to studying for the bar exam.
- 24. Defendant knew on or about June 11, 2003 that a hearing would be scheduled, or had already been scheduled, before the Civil Service Board to address his recommendation of termination.
- 25. Defendant failed to make a full and honest disclosure to the BOLE regarding the circumstances surrounding and the reasons for his resignation from the Charlotte-Mecklenburg Police Department.

THEREFORE, plaintiff alleges that defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

By failing to disclose in his application to the North Carolina Board of Law Examiners and failing later to supplement his BOLE application with the following information:

- (1) His failure to pay Federal income taxes for the years 1997, 1999, 2001 and 2002 when due;
- (2) His failure to pay State income taxes for the years 1999, 2001, and 2002 when due;
- (3) His failure, up and until the date of taking the Bar Examination, to disclose that he owed past due income taxes;
- (4) That he was, at the time of his December 2002 BOLE application and thereafter, the subject of an existing official administrative investigation of his conduct by the Charlotte-Mecklenburg Police Department;
- (5) His suspension for lying to the Chain of Command Review Board of the Charlotte Police Department during an official administrative investigation of his improper conduct at an off duty security job in December 1991; and
- (6) His explanation of the reasons and circumstances surrounding his resignation from the Charlotte-Mecklenburg Police Department in his June 2003 supplement to the BOLE.

Defendant knowingly made a false statement of a material fact in violation of Rule 8.1(a), failed to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter and knowingly failed to respond to a lawful demand for information from an admissions or disciplinary authority in violation of Rule 8.1(b).

SECOND CLAIM FOR RELEF

- 26. Paragraphs 1-25 are re-alleged and incorporated by reference herein.
- 27. In or about November 2006, Morris Chisholm (hereinafter "Chisholm") retained Mackey for a fee of \$1,000 to represent him in the uncontested adoption of Chisholm's then seventeen year old stepdaughter.
- 28. Mackey filed the adoption petition on or about December 13, 2006 with the Clerk of Court of Mecklenburg County.
- 29. At the time of the filing, the minor child was approximately four months short of her eighteenth birthday, April 15, 2007, which was the last day the child was legally eligible to be adopted as a minor.
- 30. Between the time Mackey was retained in November 2006 and April 15, 2007, the deadline for the minor's adoption, Mackey failed to reasonably consult and communicate with Chisholm, failed to return Chisholm's phone calls, failed to monitor the progress of the adoption and failed to follow up with Chisholm regarding a required Department of Social Services interview and report.
- 31. Communication with Chisholm, as well as timely monitoring of the progress of the adoption proceeding, was critical in this case because Mackey knew that the adoption had to be completed by a date certain or it could not occur.
- 32. The adoption was not finalized before April 15, 2007, such that the child could not be adopted as a minor.
- 33. Chisholm did not learn the adoption did not occur until July 2007, when his wife called the Clerk of Court's office and was advised by that office that there was no adoption.
- 34. Mackey failed to return repeated telephone calls from Chisholm and failed to advise Chisholm that the adoption had not occurred.
- 35. Chisholm filed a small claims action against Mackey for the attorney fees he paid in connection with the failed adoption.
- 36. The court entered judgment in favor of Chisholm against Mackey in the sum of \$1,000.00.

THEREFORE, plaintiff alleges that defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

- a. By failing to pursue the adoption, Mackey failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- b. By failing to respond to Chisholm's phone calls, Mackey failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed in violation of Rule 1.4(a)(3); and
- c. By collecting a fee from Chisholm and then failing to provide the legal representation for which Chisholm paid the fee, Mackey collected a clearly excessive fee in violation of Rule 1.5(a).

THIRD CLAIM FOR RELEF

- 37. Paragraphs 1-36 are re-alleged and incorporated by reference herein.
- 38. During the calendar years 2003, 2004, 2005 and 2006, Mackey received sufficient income to require Mackey to file Federal and State income tax returns.
- 39. For each of these tax years, Mackey knew the deadlines for the filing of his Federal and State income tax returns.
- 40. Mackey failed to file Federal and State income tax returns for years 2003, 2004, 2005 and 2006 at the times required by State and Federal law.
- 41. Mackey's failure to file the required Federal and State income tax returns on a timely basis for each tax year 2003, 2004, 2005 and 2006 was willful.
- 42. Willful failure to file a Federal tax return is a misdemeanor under 26 USC § 7203. Willful failure to file a State tax return when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236(A)(9).

THEREFORE, plaintiff alleges that defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. By failing to timely file the required Federal income tax returns for years 2003, 2004, 2005 and 2006, Mackey committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a

lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and

b. By failing to timely file the required State income tax returns for years 2003, 2004, 2005 and 2006, Mackey committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, plaintiff prays that:

- 1. Disciplinary action be taken against defendant in accordance with N.C.G.S. §84-28 (c) and 27 N.C.A.C. 1B §.0114 as the evidence on hearing may warrant;
- 2. Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- 3. For such other and further relief as the Hearing Committee deems appropriate.

This the 20th day of July, 2009.

Comes R. Fox

James R. Fox, Chair

Grievance Committee

Katherine Jean, Counsel Attorney for Plaintiff

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